

Regarding the election of claimed species, Applicants respectfully traverse on the grounds that a generic claim can include a reasonable number of species that a search and examination of all the species at one time would not impose a serious burden on the Examiner. Applicants submit that this application presents this situation.

Indeed, the Examiner submits that claims 1-17 and 24-33 appear generic leaving dependent claims 18-23. Claims 18-23 provide very similar limitations and all depend from independent claim 10. Since a search for the elements of the claimed inventions identified in independent claims 1 and 10 would also cover the related limitations of dependent claims 18-23, it is not clear to Applicants by reading the Office Action, the different species envisioned. (See 37 C.F.R. §141(a) and 37 C.F.R. §146).

Further, Applicants respectfully submit that the subject matter of all of claims 1-33 is sufficiently related that a thorough search for the subject matter of any one group of claims would overlap a search for the subject matter of the remaining claims. In particular, the use of HMX and RDX as a nitramine (which are known to be used, alone, or in combination) and, similarly, the use of aluminum and magnesium as a fuel particle (which may be used alone, or in combination, as these elements share similar characteristics particularly as both elements are found in the same row of the periodic chart). Thus, Applicants respectfully submit that the search and examination of the entire application could be performed without serious burden to the Examiner.

Please note, for emphasis, the Office Action explicitly refers to Invention I, which includes claims 1-33, as being classified in class 149, sub-class 62. Thus, further suggesting a search could be performed without serious burden. (See M.P.E.P. § 803; and Office Action, Page 2).

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Applicants respectfully submit that the policy requiring the examination of the entire application even though it may include distinct inventions and/or species, should be applied in the present application in order to avoid unnecessary delay and expense to Applicants and duplicative examination by the Patent Office. Applicants respectfully request reconsideration and withdrawal of the election of species requirement and to examine all species and claims in this application.

In addition, Applicant would like to submit that the case law, including In re Weber, 14 U.S.P.Q. 2d 1407 (Fed. Cir. 1990) and In re Harnish, 631 F.2d 716, 206 U.S.P.Q. 300 (C.C.P.A. 1980) as well as the M.P.E.P. Section 803.02, indicate that a Markush claim should be examined unless the subject matter in the claims lack unity of invention. Claims possess unity of invention when they share a common utility and share a substantial structural feature, disclosed, as being essential to that utility, e.g., HMX and RDX as well as Aluminum and Magnesium as discussed above.

However, in the alternative, and further to a telephone conference with the Examiner, should the Examiner still not be persuaded by the above discussion, and to facilitate prosecution though reserving the right to Petition an Election Requirement, Applicants elect, with traverse, a specie. The specie includes a fuel particle comprising aluminum, a nitramine comprising HMX and a binder coating comprising a polyacrylate. Nonetheless, please note, that none of the claims in the Application identify a specific binder coating. Thus, Applicants should not be required to elect an element not claimed but only identified in the Specification.

Finally, as indicated above, regarding the methods of making the above article of manufacture on which at least claims 34-46 are readable, Applicants respectfully do not

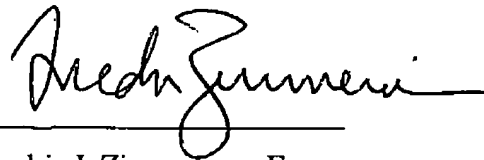
elect these claims but reserve the right to file, timely, a divisional application containing these claims.

Early favorable prosecution on the merits is respectfully requested.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

Respectfully submitted,

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